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## Introduction: Formalism, Informalism, and Innovation in Space and Telecommunications Law

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## Introduction: Formalism, Informalism, and Innovation in Space and Telecommunications Law

The University of Nebraska College of Law hosted its second major space and telecommunications law conference on May 1–3, 2008, at the Cornhusker Marriott Hotel. Among the conference attendees were seven admitted students to the Law College's inaugural LL.M. (Master of Laws) class that will enroll in August 2008. As with its first conference on March 2, 2007, the conference drew speakers from a wide swath of academia, government, and the private sector, with national and international connections. The theme of this year's conference was "Formalism, Informalism, and Innovation in Space and Telecommunications Law." It built upon discussions on this theme at an October 2007 Space Law Seminar in Omaha done in conjunction with the Strategic Space and Defense Conference.

Jonathan Galloway, Vice President of the International Institute of Space Law and Professor Emeritus at Lake Forest College, gave the inaugural address for space law. Professor Galloway argued that space law has featured revolutionary moments and evolutionary moments just as space exploration and development have undergone such moments. Professor Galloway's paper addresses these moments and their connection to both formal and informal regulation of space activities throughout the forty-plus years of history since the Outer Space Treaty of 1967. Professor Galloway's talk also highlighted the relationship between law and technology moving forward—without law on issues such as intellectual property and liability, technological innovation would be hampered. Professor Galloway's paper is published in this issue of the *Nebraska Law Review*.

Ambassador Richard Russell, U.S. Ambassador to the International Telecommunications Union ("ITU") World Radiocommunication Conference ("WRC"), gave the inaugural address on the telecommuni-

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cations law side. Ambassador Russell gave an overview of the WRC process, including U.S. preparations for the WRC, and the major achievements of the latest WRC-07. The preparatory process is quite complex with a U.S. interagency team comprised of numerous government actors, including the State Department, National Telecommunications and Information Administration of the Department of Commerce (that manages spectrum of the federal government), the Federal Communications Commission (responsible for spectrum held by private sector), the Department of Defense (a major spectrum user), and NASA (also a spectrum user). The U.S. delegation to the most recent WRC was over 150 persons with many private sector representatives on the delegation. The U.S. holds over forty bilateral consultations, as well as coordinates with regional bodies such as the CITEL in advance of the WRC. The WRC-07 Agenda primarily involved competing interests vying for spectrum, including: terrestrial v. satellite, passive v. active, and incumbent v. new entrant.

Professor Francis Lyall, Aberdeen University (Scotland), followed with a presentation focusing on possible reforms to the ITU. Among the proposals Professor Lyall floated were changes that would establish greater linkage between budgetary contributions and decision-making powers, new powers for the Radiocommunication Bureau to decline orbital slot allocations if there is not sufficient supervisory capacity within the requesting country, greater assurances that public services will have sufficient spectrum, and consideration of using fees or auctions for orbital slots.

Helen Domenici, International Bureau Chief, FCC, presented a paper on the role of her Bureau over the noon lunch hour. Nebraska's own Astronaut Clayton Anderson, who hails from Ashland, Nebraska, gave a broad public lecture on the opening day of the conference following lunch. Professor Frans von der Dunk's inaugural lecture concluded the first day's sessions. Professor von der Dunk's talk titled "As Space Law Comes to Nebraska, Space Comes Down to Earth" is published in this issue of the *Nebraska Law Review*. Professor von der Dunk's lecture highlights the increase in new actors, particularly private actors, in space activities and the "capstone" or broad-based nature of space law. To this I would add, space law is an excellent "case study" within international law given the wide variety of tools and mechanisms used to regulate space activities.

Pamela Meredith, Co-Chair, Space Law Practice Group, Zuckert, Scoult & Rasenberger (Washington, D.C.) led the opening session of day two of the conference focusing on different approaches to national space legislation. Ms. Meredith noted the U.S. approach was to establish specific regulatory regimes for specific activities. Other countries have relied on a more umbrella-type approach using broad notions of space objects and activities. She queried whether the different ap-

proaches would have practical consequences and weighed the potential benefits and drawbacks of each approach. Bruce Mann, Senior Counsel, Justice Legal Services Division, Department of Foreign Affairs and International Trade-Canada, noted that the Canadian approach was similar to that of the U.S. Professor Frans von der Dunk broke down the current approaches to national space legislation into five distinct types: 1) that of the U.S.; 2) those that regulate launch only (e.g. Norway, Australia, Brazil); 3) umbrella-type (e.g. South Korea, Netherlands, U.K.); 4) absence of legislation (e.g. France that instead agreed to be considered the launching state in documents with other European nations); and 5) that of the E.C., in which there is no competence over launching activities, so instead regulation of commercial activities connected with space is undertaken, such as free and fair competition in satellite services.

Gerardine Goh, Senior Research Fellow, University of Cologne and also with the German Aerospace Center (DLR) in its Legal and Business Support Division of the Space Agency Department, kicked off the next session's discussion on informal v. formal regulation with a discussion of the benefits and drawbacks of "soft law" generally and then examined a couple examples of its use within space law, including space debris. She noted the possibilities for eventually making soft law regulation binding through contract terms or through formal treaty. Rachel Yates, Partner, Holland and Hart (Denver), examined this theme in the context of space tourism regulation. Her talk highlighted the interaction between different types and different levels of regulation as well as the existence of some industry self-regulation. Martha Meija-Kaiser, a frequent guest lecturer on space law at several universities internationally, finished with a look at the problem of space debris and an examination of whether informal regulation through the Inter-Agency Space Debris Coordination Committee would be sufficient over time to control and curb the problem. Tim Hughes, General Counsel, Space Exploration Technologies, gave a lunch presentation on the activities of the company and the broad nature of the legal issues they face.

Professor Marvin Ammori, who will join the College of Law faculty full time in the fall of 2008, chaired the afternoon panel on wireless broadband policy and regulation. Professor Ammori spoke of the importance of getting internet to all Americans and increasing speed to costs ratios. He raised questions for the panel to address including: Should the government provide access? Should it subsidize access? Should it foster competition? Should it focus on regulation and not competition? What types of disclosures should it require? Chris Libertelli, Skype North America's Senior Director for Government and Regulatory Affairs and former legal advisor to FCC Chairman Michael Powell, argued that as a matter of public policy the wireless world

should operate like the wired world, but currently wireless operates a lot differently; namely, in the wireless realm, providers currently have much more control over what/whom can connect. He stated that a greater ethic of openness should prevail. Link Hoewing, Vice President of Internet and Technology Issues at Verizon and former advisor to the Senate Governmental Affairs Committee, provided a broad based perspective on the changes that have occurred, essentially stating that the world has changed from a wire line, narrowband, voice centric, circuit switched, copper infrastructure world to a mobile and converged, broadband, multimedia, packetized, optical infrastructure world; from proprietary to open architecture; and from traditional regulation to market based regulation. Professor Brad Bernthal of the University of Colorado–Boulder argued for increased modularity of the spectrum market and mused whether this should be done by government or left to market.

The third and final day of the conference was highlighted by a discussion of the critical issue of International Traffic in Arms Regulations as they apply to space activities. The discussion focused on ways to change or amend the legislation itself so as to not unduly hinder U.S.-based space companies or possible ways in which to change the administration of the law. The speakers for this session were John Ordway, Partner with Berliner, Corcoran and Rowe (Washington, D.C.); Mike Gold, Director, Washington D.C. area, Bigelow Aerospace Corporation; and Eligar Sadeh, Air Force Academy, Eisenhower Center for Space and Defense Studies. A paper by Mike Gold is published in this issue of the *Nebraska Law Review*.